

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

A.F., a minor, by and through his father.	)	
ANTONIO FULTZ,	)	Civ. No. 2:21-cv-1051
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
AMBRIDGE AREA SCHOOL DISTRICT,	)	
	)	
Defendant.	)	

**VERIFIED CIVIL COMPLAINT**

AND NOW comes the Plaintiff, by and through his trial attorney, Erik M. Yurkovich, Esq., who files this Verified Civil Complaint pursuant based upon the following.

**I. INTRODUCTION**

This First Amendment case arises out of the Ambridge Area School District's exclusion of a freshman high school student from the football team as punishment for a post on Snapchat—created outside of school, on his own time—that school officials concluded were "Terroristic Threats." Plaintiff seeks injunctive relief and damages.

**II. JURISDICTION AND VENUE**

1. This action seeks to vindicate rights protected by the First and Fourteenth Amendments to the U.S. Constitution and is brought under 42 U.S.C. § 1983. This Court has jurisdiction over this civil rights action under 28 U.S.C. §§ 1331 and 1343. This Court also has jurisdiction under 28 U.S.C. §§ 2201 and 2202 to declare the rights of the parties and to grant all further relief found necessary and proper.

2. Venue is proper in the Western District of Pennsylvania pursuant to 28 U.S.C. § 1391(a) because the defendant is subject to personal jurisdiction within the Western District of Pennsylvania and the events that give rise to this action occurred within the Western District of Pennsylvania.

### **III. PARTIES**

3. Plaintiff, A.F., is a fourteen-year-old student in the Ambridge Area School District. A.F. lives with his father in Ambridge, Pennsylvania.

4. Plaintiff, Antonio Fultz, is A.F.'s father. Mr. Fultz brings this action on behalf of his minor son, A.F. and resides in Ambridge, Pennsylvania.

5. Defendant, Ambridge Area School District ("the District"), is a political subdivision of the Commonwealth of Pennsylvania located in Beaver County.

6. The District maintains its administrative offices at Central Administration Office, 901 Duss Avenue, Ambridge PA 15003.

### **IV. FACTS**

7. A.F. is a fourteen (14) year-old African American male and freshman in the District.

8. A.F. qualifies for special needs and has an Individualized Educational Plan (I.E.P.) that provides for learning support.

9. One of the enumerated goals of the IEP is to improve social skills for interacting with his peers and school staff by successfully identifying appropriate strategies when dealing with anger, disappointment, and frustration on a daily basis.

10. A.F. joined the high school football team in April of 2021.

11. A.F. played the position of starting defensive tackle.

12. A.F. has participated in summer practices without pads in anticipation of playing football during the 2021-22 season.

#### **A. The Snapchat Communications**

13. Snapchat is an instant messaging app.

14. A.F.'s teammates communicated informally by Snapchat and made a group where all communications are shared only with the group members.

15. Members are able to send pictures, messages, and leave voices messages.

16. All messages are only available for a short time, usually only for 24 hours, before they become inaccessible to the recipients.

17. The group was not created, sanctioned, or monitored by the Ambridge Area School District and was a private means of communication between its members.

18. Head Coach, Sherman McBride ("McBride"), and the assistant coaches do not use the app to communicate to players.

19. On or about June 23, 2021, A.F. was communicating with his weightlifting coaches, Xiyraill Barnat ("Barnat") and Keith Olden ("Olden") in the snapchat group via text messages.

20. They were concerned A.F. was not going to weightlifting.

21. An older Caucasian teammate (hereinafter "The teammate"), a sophomore, intervened in the communications.

22. The teammate, who was also competing for the defensive tackle position held by A.F., sent voice messages to A.F. calling him a "lazy bum" and swearing at him.

23. A.F. has a history with this older teammate and they have competed for the same football position since A.F. was in 7<sup>th</sup> grade.

24. The teammate and his cousin physically assaulted A.F. in 2018.

25. A.F. recently beat the teammate for the starting defensive tackle position and believed he was being bullied again by this teammate.

26. A.F. and the teammate began to insult each other, A.F. by texts and the teammate by voice messages.

27. The argument escalated when the teammate told A.F., "You want to fight? I will kill you."

28. Similar threats were then exchanged by A.F. in text and the teammate by voice message.

29. A.F. sent an older picture he had in his phone of him holding a BB gun with the barrel pointed away and over his shoulder.

30. A.F. sent no threat attached to the picture.

31. The argument stopped between A.F. and the teammate soon after the picture was sent.

32. The argument was observed by coaches, Olden and Barnat, who remained logged on the app.

33. Olden has provided A.F. with a subsequent written statement that reads, "Nothing wasn't said that doesn't get said everyday between kids."

34. Barnat has provided A.F. with a subsequent written statement that reads, "In the snapchat messages there was a back-and-forth argument between" A.F. and the teammate.

#### **B. First School Meeting**

35. On or about June 24, 2021, father of A.F., Antonio Fultz, ("Fultz") was contacted by the District.

36. Fultz and A.F. met with Coach Sherman and High School Principal, Janice Zupsic ("Zupsic").

37. Zupsic expressed concern about a photo of a gun and told A.F. he was banned from participating on the 2021-22 high school football team, but not regular school or classes.

38. A.F. and Fultz explained the gun in the photo was a "BB gun" owned by a cousin.

39. Zupsic called the Ambridge Police Department during the meeting and Officer, Glen Sovich ("Sovich") arrived to investigate and spoke with A.F.

40. After the officer arrived, Zupsic told everyone, "pending an investigation, if it's a BB Gun, A.F. can go back on the team."

41. Sovich called A.F.'s cousin and quickly confirmed the photo was not recent and did show a picture of his cousin's BB gun.

42. Sovich said there would be no criminal complaint filed and no charge were filed.

43. Mr. Fultz followed up with Principal Zupsic on June 28 and/or 29, 2021 and Zupsic had made no determination on whether A.F. could be back on the football team.

44. Fultz reached Zupsic on June 30, 2021 who informed Fultz that A.F. was no longer on the football team.

#### **D. First School Letter**

45. A.F. received an undated letter from the Ambridge Area School District, signed by Principal Zupsic, on July 3, 2021, confirming that A.F. was no longer on the football team for the 2021-22 season.

46. The letter alleged that A.F. made “repeated terroristic threats” to another student including “threatening to kill him in a number of ways” and “showed the student a gun through the social media platform he was using.”

47. The letter stated that “these actions are considered threats ... and are considered a Level IV infraction according to the Student Handbook. As defined on page 12 of the student handbook, Level IV infractions include but are not limited to: serious threats on students; making terroristic threats or bombs threats; or physical attack on a faculty, staff member’s person, property, or both – in or outside of school; drug violations; sexual harassment; serious vandalism; stealing of money/valuables; shoplifting on class trips; weapons violation; and transferring of counterfeit money; student assault.”

48. The letter continued “According to the Student Handbook, Level IV violations can result in one or more of the following: 10 day out-of-school suspension, referral to the school board for expulsion, and referral to the police for arrest and filing of charges. In addition, all students who have committed a Level IV violation may be excluded from attending and participating in all school activities and functions for the remainder of the school year.”

49. The letter continued, “Because of the level of severity of A.F.’s actions, the district removed A.F. from the football team. The decision was made because of the fact that A.F. made repeated threats on a school platform created by the football team coaches to communicate with players. The district could have taken more sever action. The district

takes terroristic threats very seriously and has acted within its realm of authority to remove A.F. from the football team. The district will be reconvening A.F.'s IEP Team to review his IEP and develop a safety plan."

50. A.F. disagreed with the District's conclusions in the letter.

51. Mr. Fultz called Zupsic and Vice Principal, David Turk ("Turk") on or about July 6, 2021, and another meeting was held on July 13, 2021.

#### **D. The July 13, 2021 Meeting**

52. A.F., Dr. Melvin Steals, Fultz, and NAACP Beaver Branch representative, John Thomas, attended on behalf of A.F.

53. Zupsic, Turk, Interim Director of Special Education, Amy Filipowski, D.Ed. ("Filipowski"), and Superintendent, Joseph w. Pasquerilla, Ed.D. ("Pasquerilla") attended on behalf of the school district.

54. A.F.'s representatives requested discipline mitigation, another option other than removing him from the football. Representatives submitted that A.F.'s participation in football would help him as a young black male with special needs.

55. A.F.'s representatives tried to explain that the teammate intervened in communications between A.F. and weightlifting coaches in the group chat. They explained that the teammate had a history of bullying A.F. and wanted his position on the football team. They explained that the teammate was sending voice messages threatening to "kill" A.F. first, before A.F. posted the photo of the BB gun.

56. Fultz played a sample of the audio sent from the teammate for the District to support A.F.'s side of the story. It was also explained that it was not possible to take a "screen shot" of those audio messages and they are automatically deleted by the app.

57. Pasquerilla admitted that he was not aware of the voice messages from the teammate and they would let the attendees know of their decision.

**E. Letter dated, July 13, 2021**

58. A.F. received a letter from The Ambridge Area School District, dated July 13, 2021 that ratified its prior decision to ban A.F. from the 2021-22 football team as a result of a Level IV violation of the Ambridge Area School District Handbook.

59. A.F. retained his present trial counsel who, on July 26, 2021, informed the District of his intentions to file this Complaint following the recent United States Supreme Court Decision in *Mahanoy Area School District v. B.L.*, 594 U.S. \_\_\_\_ (2021) No. 20-255, decided June 30, 2021, that held Mahanony Area School District violated a student's rights protected by the First Amendment when it suspended her from the junior varsity cheerleader squad for off-campus snap chat posts that did not cause substantial disruption at school or to the rights of others.

60. The District has responded via its Solicitor, but has not reversed it's decision.

**F. The 2021-22 Football Season**

61. A.F. has been practicing with the football team over the summer without pads as is required in anticipation of starting as a defensive tackle in the 2021-22 football season.

62. The football team's first day of practice with pads is August 9, 2021.

63. Coach Sherman has told A.F. that he needs to be on the team by August 9, 2021 to play.

64. Training camp is August 16, 2021.



65. The first exhibition game is on August 21, 2021.

66. The first game is on August 27, 2021.

67. Players have been taking their free physicals over the past few weeks.

68. A.F. was not banned from school or classrooms.

69. On or about August 1, 2021, the teammate at issue posted an unsettling picture of his face in the dark on snapchat with the comment, "Anyone els have the urge to kill someone u hate at night." Fultz has advised the school of the post.

## **V. CLAIMS**

### **COUNT I:**

#### **The District's Punishment of Plaintiff Violates the First Amendment to the U.S. Constitution and 42 U.S.C. § 1983**

70. The District's exclusion of A.F. from the football team for his out-of-school speech violates the First Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment.

### **COUNT II:**

#### **The District's Rules, On Their Face, Violate the First Amendment to the U.S. Constitution and 42 U.S.C. § 1983**

71. The policies in the District's Student Handbook, specifically with regard to Level IV infractions, are unconstitutional on their face because they are overbroad and punish free lawful speech, in violation of the First Amendment to the U.S. Constitution.

### **COUNT III:**

#### **The District's Rules, On Their Face, Violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983**

72. The policies in the District's Student Handbook, specifically with regard to Level IV infractions, are unconstitutional on their face because they are unduly vague, in violation of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

**COUNT IV:**

**The District's punishment is Discriminatory based on Race and Violates The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42**

**U.S.C. § 1983, Titles IV and VI of the Civil Rights Act of 1964.**

73. A.F., is an African American male with special needs.

74. The District treated A.F. less favorably than an older Caucasian student and teammate with a history of physically bullying A.F.

75. Both A.F. and the student/teammate exchanged insults and threats to kill each other as witnessed by strength and conditioning coaches.

76. The District's decision to remove A.F. from the team and not discipline the Caucasian teammate is discriminatory based upon A.F.'s race.

77. It is believed and averred that in March of 2020, Caucasian Ambridge high school students suffered no consequences from the school after it was reported they sang racially derogatory songs on Snapchat.

**VI: PRAYER FOR RELIEF**

WHEREFORE Plaintiff respectfully requests that this Court provide the following relief:

- (a) Declare that District's disciplinary action against A.F. for his out-of-school speech violated A.F.'s rights under the First and Fourteenth Amendments to the U.S. Constitution;

- (b) Declare that the policies in the District's Student Handbook, on their face, violate the First and Fourteenth Amendments to the U.S. Constitution because they are overbroad and punish lawful protected speech;
- (c) Declare that the policies in the District's Student Handbook that have been used, and may be used, to punish out-of-school speech are unconstitutionally vague, and thereby violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;
- (d) Enjoin the District from any continuing punishment or sanction against A.F. on account of his constitutionally protected speech, including reinstating A.F. to the Ambridge high school football team and expunging from A.F.'s school records all references to the incident in question;
- (e) Award Plaintiff damages in an amount to be determined at trial;
- (f) Award Plaintiff costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (g) Grant such other relief as this Court deems just and appropriate.

Respectfully submitted,



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Date August 6, 2021

**VERIFICATION**

I, A.F., hereby affirm under the penalties of perjury:

1. I am a minor (under eighteen years old).
2. My father is Antonio Fultz.
3. I am a Plaintiff in this lawsuit.
4. I have read the factual allegations in the foregoing Verified Complaint.
5. The factual allegations are, to the best of my knowledge and belief, true and correct.

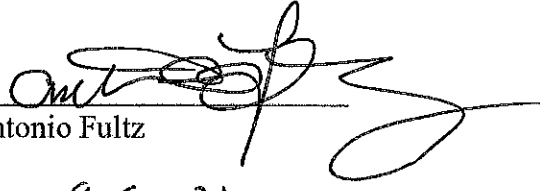
A. [REDACTED] F. [REDACTED]  
A.F.

Date: 8-6-21

**VERIFICATION**

I, Antonio Fultz, hereby affirm under the penalties of perjury:

1. I am over the age of 18 and competent to testify.
2. I am the parent of A.F., the minor identified in the foregoing verified complaint
3. I have read the foregoing Verified Complaint.
4. I have read the factual allegations in the foregoing Verified Complaint.
5. The factual allegations are, to the best of my knowledge and belief, true and correct.

  
\_\_\_\_\_  
Antonio Fultz  
Date: 8-6-21